THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.25868 of 2005

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Dated:09.12.2005

Between:

Adi Venkateswarlu, S/o.Venkatramaiah, aged about 52 years,

Occ: Business, R/o.Prakasam Road, Madhira Village and Mandal,

Khammam District.

..... PETITIONER

AND

District Collector (Panchayat Wing), Khammam District,

Khammam.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.25868 of 2005

ORDER:

The petitioner is a resident of Madira Village. He was granted lease for quarrying sand at Madupalli Point, Wyra Vagu, Madupalli Gram Panchayat for the period from 12.04.2005 to 30.09.2005. After expiry of the lease, the petitioner agreed to increase the lease amount by 10%. Therefore, the second respondent by proceedings dated 30.09.2005 renewed the lease for another year from 01.10.2005 to 30.09.2006. But, the first respondent herein, however, by impugned proceedings dated 16.11.2005 directed the petitioner to stop quarrying of sand from Madupalli Village until further orders. Assailing the same, the present writ petition is filed.

The learned Counsel for the petitioner strenuously contends that by reason of

extension of the lease granted by the second respondent, the petitioner is entitled to continue the quarrying of sand up to 30.09.2006, and therefore, the impugned order is illegal and arbitrary. The impugned order is passed without any reason or ground, and therefore, it is unjust. The learned Counsel would also urge that owing to excessive rainfall in the State, the grant/continuation of lease to the petitioner would not in any manner adversely affect the ground water level, and therefore, the impugned order is unsustainable and contrary to the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short 'the Rules').

The learned Assistant Government Pleader for Panchayat Raj opposed the writ petition contending that this Court passed orders directing the District Level Committee to consider the applications for lease having regard to the ground water depth, and therefore, the District Collector obtained the report of the technical experts and passed orders.

A perusal of the impugned order would show that the Deputy Director, Ground Water Department, submitted a report on 10.10.2005 informing that the re-survey of the area was conducted by the Assistant Director and the Assistant Hydro Geologist on 07.10.2005, and further reported that the Village is categorized as safe zone and in view of the availability of the water ground, the petitioner may be permitted to quarry sand by imposing certain conditions. Again, the Assistant Hydro Geologist submitted his opinion on 13.10.2005 raising certain objections. Therefore, the Deputy Director, Ground Water, personally inspected the site on 15.10.2005 and opined that if the rainfall is scanty, sand mining may have impact on the existing ground water structures, and accordingly, advised to stop sand mining at Madupalli Village. The District Collector considered all the reports and came to the conclusion that in view of the two contradictory reports by the Deputy Director, Ground Water, it is better to get the matter examined by a senior Officer. Accordingly, the District Collector referred the matter to the Director, Ground Water, Hyderabad, to appoint a senior Officer for deciding the matter, and purporting to exercise the power under Rule 9-V of the Rules, directed the petitioner to stop quarrying of sand until further orders.

After giving anxious consideration to the facts of the case and submissions made by the learned Counsel for the contesting parties, this Court is of the considered opinion that the District Collector has not taken a final decision in the matter. He only stopped the quarrying of sand pending further action after getting a report of the senior Officer nominated by the Director of Ground Water Department. Such a power inheres in the District Collector as per Rule 9-V of the Rules, which reads as under.

> **9-V**. Whenever the Ground Water effect is noticed, safety of structures is effected due to sand quarrying by the lease holder, the Collector concerned shall denotify the area in consultation with Ground Water Department and with the concerned District Panchayat Officer and the local bodies as the case may be.

This Court considered the effect of sand quarrying and depletion of ground water resources in **D.Viswanatha Reddy and Company, Kurnool v Government**

of A.P.

I n **D.Viswanatha Reddy and Company, Kurnool v Government of A.P.**, the District Collector, Kurnool, issued orders cancelling the sand quarrying rights of the petitioner therein *inter alia* on the ground that lifting of sand from Tungabhadra river in and around Kurnool would adversely affect the ground water potential in the area. The order of the District Collector as well as the Government were challenged on various grounds. This Court considered the question whether as *sentinel qui vave* this Court can ignore the fundamental right of the citizens under Article 21 of the Constitution of India and ignore the question of environmental degradation while enforcing the right under Article 19(1)(g) of the Constitution of India. This Court applied the Roman Law principle "*salus populi est suprema lex*" and the relevant rules especially Rule 9-V of the Rules, and held as under (paras 17 and 18 of ALD):

> Rule 9V postulates that whenever the ground water safety structure is effected due to sand quarrying by the lease holders, the District Collector concerned, shall denotify the area in consultation with the ground water department and with the concerned District Panchayat Officer and the local bodies, as the case may be.…
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> Sri Manohar, would submit that the power to denotify the existing sand quarry which is covered by a lease, does not include the power to cancel the lease. In my considered opinion, the power to cancel is incidental and supplemental to the power to denotify a sand quarry….

Yet again, it was observed in paras 18 and 19 as under.

> In matters, which require the evaluation of various factual and data inputs, merely because other alternatives would appeal to the Court, it is of no ground to render a decision or an order invalid on the ground of arbitrariness and irrationality. The opinions differ from one expert body to another expert body and from one scientist to another scientist. It is always better to leave these matters to the Government of the day, which in law is entitled to rule and govern by trial and error subject to constitutional limitations. I am, therefore, not able to agree with the submission….
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> It must be remembered that as observed by me in the beginning of this order, the public interest should prevail over the private interest, be it an ownership or be it a possessory ownership by reason of a lease. There is nothing wrong to apply the legal maxim *Salus Populi Suprema lex* with regard to public welfare and the Court is bound to follow the same when almost a million residents of Kurnool Municipal Corporation and the surrounding villages are suffering the shortage of drinking water and the after effects. The Court cannot be blind and deaf to ignore the same and come to the rescue of a citizen whose lease is admittedly expiring on 20.5.2002 and whose loss, if any, can always be compensated in terms of money by a common law Court for breach of lease agreement. It is axiomatic that in matters of protection of environment and ecology the Constitutional Courts being one of the three great organs of the State cannot ignore Article 48-A of the Constitution of India. The Court is a protector of environment. It is for this reason the Court is entitled to examine all issues when complaints of

environmental degradation are brought before it notwithstanding the principle of law the executive governs and the judiciary adjudicates.

The principles discussed in the Judgment referred to hereinabove are also equally applicable to the case on hand.

By proceedings dated 30.09.2005, the second respondent, while according the renewal of lease for quarrying sand in Wyra Vagu sand reach at Madupalli Village, clearly made it subject to, *inter alia,* the condition that the renewal is subject to the report of the committee of the Deputy Director, Ground Water Khammam and the Executive Engineer, Irrigation Branch Khammam. Therefore, this Court does not find any infirmity in the order passed by the first respondent, nor the petitioner is able to demonstrate any superior right in preference to community right that can be enforced in this writ petition.

The Writ Petition is therefore, dismissed. No costs.

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(V.V.S.RAO, J)

09.12.2005

Note: Issue C.C in one week.

B/o.

vs